

RESPONSIBILITIES, RIGHTS, AND RESTRICTIONS

CHAPTER 9

Commanders' Responsibilities

ADVISING SOLDIERS

You should refer most insurance problems to a legal assistance attorney. You should also, however, inform soldiers of the Servicemen's Group Life Insurance (SGLI) program. With this plan, soldiers can insure themselves for up to \$50,000 for a low monthly charge and can select a beneficiary. The insurance coverage will terminate if a soldier is AWOL for 31 days continuously, is convicted and confined by a civilian court, or is confined due to a court-martial sentence involving total forfeiture of pay and allowances. Restoration to active duty will revive the insurance.

You may receive requests from insurance agents for permission to talk with individual soldiers about life insurance. You should generally deny permission unless they can show written permission from the installation commander and evidence that the soldier has invited them to discuss insurance matters.

Civilian Creditors and Debt Collectors

Creditors and debt collectors may request that you assist them in collecting soldiers' debts. While you must reply in all cases, you will assist creditors and debt collectors only under specified circumstances. To respond appropriately, consult AR 600-15, which identifies Army policy and establishes procedural requirements. Your response may range from advising that the military cannot accommodate the request to helping the soldier develop a payment schedule.

Under federal law, debt collectors may not seek the assistance of third parties, such as employers and commanders, without first obtaining either the debtor's consent or a court order. Federal law does not prohibit creditors

from contacting third parties to seek collection assistance, but state law may forbid such contacts without consent or a court order. If such contacts are permitted, or if the requester has gotten the requisite court order or consent, you should ensure that the requestor has provided the documents required by AR600-15 and should interview the debtor-soldier before providing collection assistance. You should not release information about this interview without the soldier's consent.

Disputed debts can be resolved only by the parties to the dispute or through the judicial process. Consequently, if the soldier disputes the debt, you may not require him to pay it. You should refer soldiers who have questions regarding debts to the legal assistance office. Legal assistance attorneys can advise soldiers and their family members about the lawfulness of debts and can help them decide what to do. Army Community Services offices often provide financial and budget counseling and can help develop payment plans and budgets.

You may initiate administrative elimination or court-martial of soldiers who dishonorably fail to pay just debts. Whether a debt is just and whether a soldier's failure to pay it is dishonorable are questions that an elimination board or court-martial panel must resolve.

PATERNITY, CUSTODY, AND NONSUPPORT CLAIMS

You may occasionally receive a letter from an unwed mother or mother-to-be asserting that a soldier is the father of her child and demanding that the Army do something about the matter.

AR 608-99 addresses the proper action for you to take.

You are responsible for ensuring that soldiers honor their family support obligations. When they fail to honor court custody orders or refuse to provide adequate support for spouses, children, and other family members, you should take firm action as discussed in AR 608-99. You should advise soldiers of possible consequences, including garnishment of up to 65 percent of military pay for nonsupport, if they do not fulfill these responsibilities. Soldiers who willfully neglect to support their families may be court-martialed under UCMJ, Article 92, or they may be administratively eliminated from the service.

When the nature or extent of liability for support is in doubt, you should refer the soldier to the legal assistance office and seek legal advice yourself from an administrative law attorney (not a legal assistance attorney). If problems of pay or allowances are involved, however, you should first refer the soldier to the finance office.

Unions

Groups seeking to bargain with commanders on such matters as duty, hours, duty rosters, pass policies, or political activities have no legal status. DOD Directive 1354.1 and AR 600-50 give specific guidance. In exercising good leadership, you must be willing to discuss complaints and other matters with your soldiers individually, but under no circumstances may you recognize or lend legitimacy to unions.

RESOLVING COMPLAINTS UNDER UCMJ, ARTICLE 138

Article 138 of the UCMJ provides a complaint procedure for members of the active Army and members of the Army reserve on active duty training who think their commanders have wronged them. (A commander is an officer, in the complainant's chain of command, up to and including the first officer exercising general court-martial jurisdiction over the complainant, authorized to impose nonjudicial punishment on the complainant.)

Procedure

If one of your soldiers has a complaint, he must first ask you in writing to correct the wrong, that is make a request for redress. If you do not resolve the complaint, the soldier may make a formal written complaint, called a 138 complaint, to his immediate superior commissioned officer. The complaint must allege that you took a discretionary action that adversely affected the soldier. The action must have been arbitrary, capricious, or materially unfair, an abuse of discretion; or beyond your authority. The soldier must file the 138 complaint within 90 days of learning of the wrong. The time you take to decide the request for redress is not part of the 90 days.

The commander who receives the complaint must forward it to his GCMCA, who will investigate the complaint and take whatever action he thinks proper. After the GCMCA takes action, he must forward the file to The Judge Advocate General (TJAG) unless the soldier voluntarily withdraws it. TJAG will review the matter and will act on behalf of the Secretary of the Army.

Resolution

Department of the Army policy is to resolve all grievances at the lowest possible level of command. Since all soldiers have a statutory right to complain under Article 138, you may neither restrict submission of 138 complaints nor retaliate against soldiers who submit them. Soldiers must, however, follow the procedures outlined in AR 27-10, Chapter 20.

Unless the soldier voluntarily withdraws the 138 complaint, the GCMCA must forward the file to DA, even if the soldier gets the relief he or she requested. Therefore, although you are presumed to have acted properly, you should try to resolve any meritorious complaint at the request-for-redress stage. The servicing judge advocate is available to advise you whether a request for redress or a 138 complaint was properly submitted, how it should be processed, and what relief, if any, should be granted the soldier.

DISPOSING OF PERSONAL PROPERTY

Your command responsibilities will sometimes include the recovery, safeguard, and/or disposition of soldiers' personal property.

Deceased Soldiers

RECOVERY AND SAFEGUARD OF PERSONAL EFFECTS

When soldiers die, their personal effects should be handled with dignity and extreme care. You must make every effort to ensure that their belongings are not stolen, damaged, or lost. Prompt action is essential, and failure to comply with Army regulations may result in claims against the Army. You may handle personal effects under Army control differently, depending on whether or not a soldier died in a combat area. (See AR 600-8-1, Chapters 34 and 35). Outside a combat area, the commander of the installation where the personal effects are located may appoint a summary court to secure and dispose of them. (See AR 600-8-1, paragraph 34-6.)

Combat areas. In combat areas, commanders are responsible for recovering and properly evacuating all personal effects of deceased soldiers. As the commander, you will have personal effects found on a soldier shipped with the body. You will also have all items carefully inventoried on DD Form 1076, placed in personal effects bags, and secured.

Money and negotiable instruments are handled differently. Amounts of \$5 or more are withdrawn, converted into US Treasury checks, and forwarded to the Army Effects Office. (See AR 600-8-1, paragraph 35-11). DD Form 1076 will be used to document the disposition of the funds.

Property soldiers have left in units, hospitals, or rear areas must be collected, inventoried on DD Form 1076, and shipped to the theater effects depot. You must secure motor vehicles and household goods until disposition instructions come from the theater effects depot. (See AR 600-8-1, paragraph 35-13.) Organizational clothing and equipment are not personal effects and must be turned in to the appropriate supply officer. You will review documents and sealed material to safeguard military information.

Keep in mind that information concerning the recovery, inventory, or disposition of personal effects of deceased soldiers will not be furnished to the next of kin or other persons except by the Army Effects Office. They will forward inquiries and all available information to the Army Effects office for reply. (See AR 600-8-1, paragraph 35-15).

Noncombat areas. For soldiers who die outside a combat area, installation commanders or designated representatives are responsible for collecting and safeguarding their personal effects. Unit commanders have initial responsibility and act as both liaison and coordinating officers in disposing of a deceased soldier's property. Just as for combat area deaths, unit commanders will withdraw military documents and organizational clothing and equipment and will inventory all effects on DA Form 54. They will have all obscene, embarrassing, mutilated, or blood-stained items destroyed and all clothing designated for shipment cleaned. (See AR 600-8-1, paragraph 34-2.)

TRANSFER OF PERSONAL EFFECTS

The personal effects of a soldier who has died can be transferred either with or without summary court procedures.

Without summary court procedures. When surviving spouses or legal representatives are present at the installation, you will usually be directed to deliver the effects to them. Unit commanders will retain a receipt for the belongings on the original DA Form 54. They will forward the receipted copy to HQDA (DAPC-PEC-D), Alexandria, VA 22331-0400. They will also deliver all currencies, commercial papers, stocks, bonds, and checks with the rest of the belongings.

Exceptions are—

- Funds belonging to the government.
- Government checks payable to the deceased that are drawn on the Treasurer of the United States or on foreign depositories.
- Military payment orders payable to the deceased.

With summary court procedures. If the Army cannot deliver belongings of deceased soldiers to surviving spouses or legal representatives at the installation where the effects are, the installation commander will appoint a summary court to secure and dispose of them. The summary court determines who is eligible to receive the belongings. (See AR 600-8-1, paragraph 33-3, for the order of precedence.)

The summary court's report will include-

- The name, address, and relationship to the decedent of the person designated to receive the personal effects.
- The means used to determine local debtors and creditors.
- The amount of money, if any, collected and paid out.
- The total amount of cash received from the sale of effects and by whose authority they were sold.

The summary report must also include other documents, including copies of orders, correspondence, and legal documents (see AR 600-8-1, paragraph 34-6b) and a copy of the letter from the summary court to the person receiving the belongings. This letter advises that the delivery of the personal effects does not necessarily make the recipient the owner of the property, but that the law of the decedent's state will decide ownership of the property.

After the appointing authority has reviewed and approved the report, he will forward it with one copy of the DA Form 54 to HQDA, (DAPC-PEC-D), Alexandria, VA 22331-0400. The summary court will transfer money and negotiable instruments in accordance with AR 600-8-1, paragraph 34-2D7. This procedure includes converting currency over \$5 into a US Treasury check to be sent to the designated representative.

When the summary court can find or contact no next of kin or legal representative, it will wait 30 days and then sell all property except those items with keepsake value. (See AR 600-8-1, paragraph 34-2-10). The Army will then deposit and hold the funds. The summary court will

forward those items valued chiefly as keepsakes and commercial paper such as stocks and bonds to HQDA, (DAPC-PEC-D), Alexandria, VA 22331-0400, for transfer to the soldier's home.

SALE OF PERSONAL EFFECTS

At times the summary court will best serve the interests of all concerned by selling some of the decedent's property. When the surviving spouse or legal representative is not present, the installation commander may authorize such sales if the spouse or representative has provided a power of attorney to sell the goods. The summary court may sell a motor vehicle or other large item without the permission of the person designated to receive it if-

- The sale is in the best interest of the government.
- An emergency exists.
- The court has made a reasonable effort to determine the wishes of the designated recipient. (See AR 600-8-1, paragraph 34-8.)

The summary court's report must include complete records of such sales, including advertising, authority for sales, and bills of sale.

Absent Soldiers

When soldiers are absent from their units under unusual circumstances, you must ensure that both their personal and organizational property are protected from theft, damage, or loss. Even if soldiers are absent due to misconduct, the duty to protect their property does not change. Your failure to comply may result in claims against the Army. Your duty as a commander requires you to enter the absent soldier's area and may require you to forcibly search wall and foot lockers to make a complete inventory. Such authority applies only to areas under your control and does not apply off post.

ABSENT WITHOUT LEAVE

As soon as a soldier is listed as AWOL, you will select an officer, warrant officer, or non-commissioned officer (pay grades E5 through E9) to inventory all of the soldier's property under your control. The inventory officer will

list the items and quantities of personal military clothing on DA Form 3078. He will then have a witness and the unit commander verify and initial the form. The inventory officer will place the original form with the items in the duffel bag or other container and keep three copies of the form in the unit suspense file. As soon as he completes the inventory, the inventory officer will place the clothing in the unit supply room for safekeeping. If the soldier returns to military control before being dropped from the rolls, his personal military clothing will be returned to him. (See AR 700-84, paragraph 12-12.) If the soldier is dropped from the rolls, the clothing is turned in through supply channels. If the soldier returns to military control after his property is disposed of, military clothing will be reissued at his expense. If the soldier returns to military control at another installation before being dropped from the rolls, his clothes will be shipped to him at his expense. (See AR 700-84, paragraph 12-13.)

Personal civilian clothing and property of an AWOL soldier will be inventoried on plain bond paper as discussed above, and the inventory will be filed with DA Form 3078. The unit will retain the property until the soldier returns or drops from the rolls. Cash left behind will be deposited with the finance office, and the receipt will be placed in the soldier's DFR packet. If the soldier is dropped from the rolls, you or a summary court officer (in CONUS) or the unit commander (in OCONUS) will ship his personal civilian property. (See DA Pamphlet 600-8, paragraph 9-6.)

HOSPITALIZED

When a soldier is in the hospital, you will immediately secure and safeguard his clothing and personal effects. If the soldier does not return within 120 hours, the clothing and personal effects will be inventoried in the same manner as for an AWOL soldier. When a hospitalized soldier is transferred from the post, the local medical facility commander will notify you so that the soldier's clothing may go with him. The soldier should sign for the clothing; if he cannot, the commander of the medical facility will designate an officer to do so. When an

emergency makes that impossible, you will ship the clothing within 24 hours of notification. (See AR 700-84, paragraph 12-14.)

CONFINED

Soldiers ordered into confinement will report with personal military clothing. Before transferring a soldier, you must inspect and inventory all clothing in the soldier's possession or control. You must separately inventory and hold civilian clothing and other personal property at the unit for safekeeping. (See AR 190-47, paragraph 5-8.)

Prisoners may place in safekeeping personal property that is not authorized for personal retention. Such items may include-

- Watches.
- Rings.
- Checks.
- Wallets.
- Keys.
- Pens.
- Official papers.
- Religious emblems and medals.
- Items of sentimental value.

(See AR 190-47, paragraph 5-7.)

Personal belongings secured at the unit will remain there until the prisoner returns or is reassigned. If the prisoner is reassigned to a correctional holding detachment or to disciplinary barracks, you will contact the confinement facility for disposition instructions. (See AR 190-47, paragraph 5-8.)

If the prisoner was sentenced to an unsuspended punitive discharge, you will turn in all excess personal outer military clothing retained at the unit and forward an inventory of civilian clothing and other personal property to the prisoner for further disposition instructions. (See AR 190-47, paragraph 5-8.)

Missing Soldiers

A missing soldier is one whose whereabouts and actual fate are unknown and one who is not

known to be AWOL. AR 600-8-1, paragraph 34-12 through 34-18, outlines instructions for disposing of a missing soldier's property. Effects of a soldier missing or captured in combat areas are processed as described for deceased soldiers in combat areas. Under the Missing Person's Act, when a soldier is officially reported as missing outside combat areas, the commander having control of the soldier's belongings will secure them and prepare an inventory of the belongings on DA Form 54. If the soldier is officially missing for 30 days or more, the unit commander will deliver or ship his personal effects to the spouse or legal representative. The spouse or legal representative will be notified that the delivery of the belongings does not grant ownership of the goods but that the recipient holds them as a custodian until the appropriate state decides to whom they belong. (See AR 600-8-1, paragraph 34-15).

CONTROLLING PUBLICATIONS

Only Headquarters, of the Army, may prohibit distribution of a publication on an installation. (See AR 210-10.) Installation commanders may require that soldiers get approval to distribute publications on post through other than official outlets, such as passing out underground newspapers in front of the post theater.

The installation commander determines if the publication would pose a danger to loyalty, discipline, or morale or if its distribution would interfere with a military mission. The installation commander delays distribution and forwards the material to Headquarters, Department of the Army. To ban distribution, Headquarters, Department of the Army, must find a clear danger based on fact. A publication's criticism of government officials or policy is not a basis for banning distribution of the publication, nor is a commander's disagreement with or dislike of the opinions expressed in the publication.

Although Headquarters, Department of the Army, may ban on-post distribution of publications, unit commanders may not prohibit possession of or seize them. Usually, these prohibited materials are underground newspapers. You must remember that soldiers have a right to possess such newspapers as long as they do not try to distribute them. Although the number of copies a soldier has may be evidence of intent to distribute, you should consider all the circumstances. Close coordination with the SJA is advisable on matters which involve a soldier's first amendment rights and the command's interest in promoting loyalty, discipline, and morale.